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**Before the
DISPATCH Federal Communications Commission DA 96-813
Washington, D.C. 20554**

In the Matter of)	MM Docket No. 96-116
)	
Hometown Media, Inc.)	File No. BR-950601B9
)	
For Renewal of License)	
for Station WAYB(AM))	
Waynesboro, Virginia)	

HEARING DESIGNATION ORDER

Adopted: May 16, 1996**Released: May 22, 1996**

By the Assistant Chief, Audio Services Division:

1. The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him for consideration: (a) the captioned application for renewal of license filed by Hometown Media, Inc. ("Hometown"), licensee of AM Station WAYB, Waynesboro, Virginia and (b) the results of an investigation into the station's silent status.¹

2. WAYB has been off the air since March 17, 1995, allegedly as the result of both financial and equipment problems. In its June 1, 1995 renewal application, Hometown indicated that it was concluding negotiations "with a Waynesboro businessman who has the financial ability to put the radio station back on air" and that "a (FCC) Form 315 application should be filed with the Commission requesting a transfer of control to this individual." On August 8, 1995, Hometown requested special temporary authority to remain silent, reporting only that it was unable to resume operations "due to circumstances beyond our control." Special temporary authorization permitting the station to remain silent was granted August 16, 1995. This authority expired February 16, 1996. A review of our records reveals that no application for the assignment/transfer of the station's license has been filed. Further, Hometown has neither notified the Commission that broadcast operations have resumed nor requested further extension of its special temporary authority. The station has been off the air for over one year, and there has been no demonstration that the failure to resume broadcasting is for causes beyond the licensee's control or that broadcast operations can be

¹The Mass Media Bureau has been delegated authority to designate for hearing the renewal of license applications of silent broadcast stations. See Moenkopi Communications, Inc., 8 FCC Rcd 3990 (1993).

resumed expeditiously. Therefore, WAYB is in apparent violation of Sections 73.1740² and 73.1750³ of the Commission's Rules.

3. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the renewal of license application of WAYB(AM), Waynesboro, Virginia IS DESIGNATED FOR HEARING at a time and location to be specified in a subsequent Order, upon the following issues:

- (1) To determine whether Hometown Media, Inc. has the capability and intent to expeditiously resume the broadcast operations of WAYB(AM), consistent with the Commission's Rules.
- (2) To determine whether Hometown Media, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

²Section 73.1740(a)(4) provides that:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30-day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

³Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

- (3) To determine, in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

4. IT IS FURTHER ORDERED, That, in the event it is determined that grant of the renewal of license application would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resumption of operation, the precise period of time to be established in the hearing. Failure to resume operations within the time specified in the condition will result in the cancellation of the license and the deletion of the station's call letters.

5. IT IS FURTHER ORDERED, That, to inform Hometown Media, Inc. of the issues specified against it, a copy of this Order will be mailed by certified mail/return receipt requested to:

Hometown Media, Inc.
Route 2, Box 220
Forest, Virginia 24551

6. IT IS FURTHER ORDERED, That Hometown Media, Inc. must submit to the presiding Administrative Law Judge (with a copy to the Chief, Audio Services Division) within 30 days of the release of this Order information assessing whether the resumption of the station's operations will, including exposure of workers or the general public to levels of RF radiation exceeding specific standards, have a significant environmental impact as defined by 47 C.F.R. § 1.1307.⁴ If Hometown Media, Inc. determines that the resumption of operations would be subject to the environmental processing guidelines set out in § 1.1307, it must submit an environmental assessment containing the information delineated in 47 C.F.R. § 1.1311. In the event the Mass Media Bureau determines that Hometown Media, Inc.'s showing confirms that its operations will not have a significant impact upon the quality of the human environment, it shall so inform the presiding Administrative Law Judge. Failure to provide the required information within the specified period will, pursuant to 47 C.F.R. § 73.3568(b), result in the application's dismissal with prejudice for failure to prosecute.

7. IT IS FURTHER ORDERED, That Hometown Media, Inc. must submit to the presiding Administrative Law Judge (with a copy to the Chief, Equal Employment Opportunity Branch) within 30 days of the release of this Order an original and one copy of an Equal Employment Opportunity Report (FCC Form 396).⁵ In the event the Chief, Equal Employment Opportunity Branch determines that Hometown Media, Inc.'s report satisfies applicable standards, she shall so inform the presiding Administrative Law Judge. Failure to

⁴See License Renewal Forms & Instructions (March 1995 edition), at pages 6-7, for specific information regarding the required showing.

⁵See License Renewal Forms & Instructions (March 1995 edition), at page 8.

provide the required information within the specified period will, pursuant to 47 C.F.R. § 73.3568(b), result in the application's dismissal with prejudice for failure to prosecute.

8. IT IS FURTHER ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the LICENSEE, Hometown Media, Inc.

9. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.221(c) of the Commission's Rules, SHALL FILE with the Commission, in person or by attorney, within twenty (20) days of the receipt of this Order a WRITTEN APPEARANCE stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the licensee herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Stuart B. Bedell
Assistant Chief, Audio Services Division
Mass Media Bureau